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4 CLAUDJANAE YOUNG, et al.,
5 Plaintiffs,
6 v.
7 DEVON WENGER, et al.,
8 Defendants.
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10 Case No. 23-cv-02691-SI
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13 **ORDER GRANTING MOTION FOR**
14 **JUDGMENT ON THE PLEADINGS**
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16 Re: Dkt. No. 56
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18 Now before the Court is defendants' motion for judgment on the pleadings, arguing that
19 plaintiff China Young's claims are barred on statute of limitations grounds. The Court held a
20 hearing on September 20, 2024. For the reasons set forth below, the Court GRANTS the motion.
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22
23 **BACKGROUND**

24 Plaintiff China Young brings this civil rights action against City of Antioch police officers
25 Devon Wenger and Erik Nilsen, as well as the City of Antioch and Does 1-50. The first amended
26 complaint alleges that plaintiff was at the home of her sister, co-plaintiff Claudjanae Young, at the
27 time of the incident. Dkt. No. 9 ("FAC") ¶¶ 10, 16. For the purposes of deciding today's motion,
28 the Court takes as true the factual allegations in the FAC.

29 On October 20, 2019, Claudjanae Young was "inside the open garage of her home." *Id.*
30 ¶ 10. She alleges defendants Wenger and Nilsen arrived at the home, entered the garage, and "began
31 grabbing at the Plaintiff." *Id.* ¶ 11. While in the garage, defendant "Wenger, with assistance from
32 Nilsen, took hold of the Plaintiff's arms, slammed her against a wall and then onto the ground,
33 causing Plaintiff's arm to break." *Id.* ¶ 12. Claudjanae Young was detained in handcuffs and was
34 placed sitting down on the ground. *Id.* ¶ 15.

China Young then came out of the house and began attempting to film how her sister was being treated. *Id.* ¶ 16. Wenger “rushed toward” China Young and “began grabbing at her and slammed her back and the back of her head into a parked car[.]” *Id.* ¶ 17.

On May 31, 2023, Claudjanae Young filed this action in federal court based on federal question jurisdiction. Dkt. No. 1 ¶ 8. On August 21, 2023, plaintiffs filed the First Amended Complaint, adding the claims of China Young.¹ FAC, Dkt. No. 9. China Young states two causes of action against Wenger and Nilsen under 42 U.S.C. § 1983, for violation of her Fourth Amendment rights, including excessive force and illegal entry.²

Wenger and Nilsen now move for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), arguing that China Young’s claims were untimely and that applicable tolling does not save her claims. Dkt. No. 56, Mot. at 4. The City of Antioch has filed a notice of joinder to the motion. Dkt. No. 59. In addition to an opposition brief, plaintiff requested and was granted leave to file a short supplemental brief in response to defendants’ reply brief. *See* Dkt. No. 68. Defendants then requested and received leave to file a short supplemental brief in response to plaintiff’s supplement. *See* Dkt. No. 69-1.

LEGAL STANDARD

Rule 12(c) of the Federal Rules of Civil Procedure permits a party to move to dismiss a suit “[a]fter the pleadings are closed . . . but early enough not to delay trial.” Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings is “functionally identical” to a Rule 12(b)(6) motion to dismiss for failure to state a claim. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). The court must accept “all factual allegations in the complaint as true and construe them in the light most favorable to the non-moving party.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009) (citing *Turner v. Cook*, 362 F.3d 1219, 1225 (9th Cir. 2004)). “A judgment on the pleadings is

¹ Claudjanae Young asserts three claims under 42 U.S.C. § 1983 for violation of her Fourth Amendment rights, including: excessive force, illegal entry, and unlawful detention. There is also a *Monell* claim against the City of Antioch, brought by “Plaintiff,” presumably Claudjanae Young.

² China Young's excessive force claim also names defendants Doe Antioch police officers.

1 properly granted when, taking all the allegations in the pleadings as true, [a] party is entitled to
2 judgment as a matter of law.” *Lyon v. Chase Nat'l Bank, USA, N.A.*, 656 F.3d 877, 883 (9th Cir.
3 2011) (quoting *Dunlap v. Credit Protection Ass'n, L.P.*, 419 F.3d 1011, 1012 n.1 (9th Cir. 2005)).
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5 DISCUSSION

6 The parties do not dispute that the applicable statute of limitations period is two years, and
7 that China Young filed her complaint outside of that two-year period. The incident occurred on
8 October 20, 2019, and plaintiff filed her complaint on August 21, 2023.³ However, the parties
9 dispute whether tolling saves plaintiff’s claims and whether or not overlapping tolling periods run
10 consecutively or concurrently.

11 Plaintiff contends both statutory and equitable tolling apply, including:

- 12 ○ From October 20, 2019, to October 23, 2019, under Cal. Gov’t Code § 352.1 due to
her incarceration (3 days);
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- From October 23, 2019, to November 17, 2019, under Cal. Gov’t Code § 853.6 due
to her misdemeanor arrest (25 days);
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- From April 6, 2020, until October 1, 2020, under the Judicial Council of California’s
pandemic-related Emergency Rule 9 (178 days);⁴
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- From June 4, 2020, to December 22, 2021, under Cal. Gov’t Code § 945.3 due to
pending criminal proceedings (566 days);⁵ and
16
- From February 11, 2021, to sometime in April or July 2021 due to incapacity (49 or
19 more days).
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21 Dkt. No. 64, Opp’n at 3–11. Plaintiff also contends that any overlapping tolling periods run
22 consecutively, meaning each period is separately “tacked onto” the end of the limitations period.
23 Dkt. No. 68, Pl.’s Supp. Br. at 1.
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25 ³ References to “plaintiff” in this order are to plaintiff China Young.
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27 ⁴ Cal. Rules of Court, App’x 1: Emergency Rules Related to COVID-19, Emergency Rule
28 9, available at: <https://www.courts.ca.gov/documents/appendix-i.pdf>.

⁵ Defendants have submitted documentation showing that China Young was charged on June
25, 2020, not June 4. The Court need not resolve this factual dispute at this time.

1 Section 1983 actions borrow the statute of limitations period from personal injury torts in the
2 forum state. *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). California has a two-year statute of
3 limitations for personal injury torts. Cal. Civ. Proc. Code § 335.1. In addition, “[b]ecause we
4 borrow California’s statute of limitations, ‘we also apply California’s tolling rules that are not
5 inconsistent with federal law.’” *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir. 2002) (citing *Morales*
6 *v. City of Los Angeles*, 214 F.3d 1151, 1151 (9th Cir. 2000)).

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8 **I. Equitable Tolling and Incapacity**

9 In plaintiff’s opposition brief, plaintiff asserts she is entitled to “equitable tolling arising from
10 incapacity.” Opp’n at 10. She asserts her period of incapacity began on February 11, 2021, and
11 concluded at an unspecified date three to five months later.⁶ *Id.* at 11. In her brief, plaintiff explains
12 that she sustained serious injuries in a fatal car accident. On February 11, 2021, plaintiff was a
13 passenger in a car that her friend was driving. Dkt. No. 64-1, Young Decl. ¶ 2. Plaintiff’s friend
14 lost control of the vehicle, and both were thrown from the car when it crashed. *Id.* ¶¶ 2, 8.
15 Unfortunately, plaintiff’s friend passed away. *Id.* ¶ 5. Plaintiff suffered multiple fractures and a
16 traumatic brain injury, underwent multiple surgeries, was on powerful pain medications, and “[f]or
17 several months . . . was not in a mental or physical condition to take care of [herself].” *Id.* ¶¶ 7-9.
18 During this period, plaintiff’s family took care of plaintiff by paying her bills, bathing her, buying
19 her groceries, and cleaning her home, among other things. *Id.* ¶ 10.

20 Plaintiff seeks statutory tolling under California Code of Civil Procedure § 352(a) and
21 equitable tolling under federal case law. Opp’n at 10. She first argues she is entitled to tolling under
22 California Code of Civil Procedure § 352(a) because she was incapacitated for several months
23 following the February 11, 2021 car crash. Under this provision, a person who “**at the time the**

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⁶ Plaintiff’s opposition brief variably claims incapacity for five months (“between February
26 11, 2021, and July 2021”) and three months (“Plaintiff suffered physical and mental incapacity for
27 months, following her injury (i.e., between February 11, 2021, and April 2021”). Opp’n at 2, 11.
28 Plaintiff’s declaration states she “was not in a mental or physical condition to take care of [herself]”
for “several months” and that she does not “remember much of what happened between February
11, 2021, and late April 2021.” Dkt. No. 64-1, Young Decl. ¶ 9. The difference between being
incapacitated through April 2021 and July 2021 does not change the Court’s ruling.

1 **cause of action accrued . . . lack[s] the legal capacity to make decisions”** is entitled to tolling
2 during the period of incapacity. Cal. Civ. Proc. Code § 352(a) (emphasis added). Here, although
3 plaintiff may have lacked capacity to make decisions between February 11, 2021, and April or July
4 2021, she does not allege incapacity on the date her claim accrued, October 20, 2019. She is
5 therefore not entitled to tolling under Code of Civil Procedure § 352(a). *See* Cal. Civ. Proc. Code
6 § 357 (“No person can avail himself of a disability, unless it existed when his right of action
7 accrued.”); *see also Rose v. Petaluma & S.R. Ry. Co.*, 64 Cal. App. 213, 217 (1923) (“When a right
8 of action has accrued and there are parties competent to sue and be sued at that time, the period of
9 limitations begins to run, and it will continue to run notwithstanding any subsequent disability.”),
10 *disapproved on other grounds by Harris v. Indus. Acc. Comm’n of Cal.*, 204 Cal. 432 (1928).

11 Plaintiff then argues she is entitled to equitable tolling under federal law, citing *Stoll v.*
12 *Runyon*, 165 F.3d 1238 (9th Cir. 1999). Opp’n at 10. The Ninth Circuit has applied equitable tolling
13 “when the plaintiff is prevented from asserting a claim by wrongful conduct on the part of the
14 defendant, or when extraordinary circumstances beyond the plaintiff’s control made it impossible
15 to file a claim on time.” *Stoll*, 165 F.3d at 1242 (citation omitted). In *Stoll*, the Ninth Circuit
16 equitably tolled the Title VII sexual harassment claim of a plaintiff where not doing so would have
17 benefited the defendant, whose “own admittedly outrageous acts left Stoll so broken and damaged
18 that she [could] not protect her own rights.” *Id.* The court also considered the “overwhelming
19 evidence that [Stoll] was completely psychiatrically disabled during the relevant limitation period”
20 and that “her mental illness, caused by the [defendant’s] wrongful conduct, precluded her from
21 exercising an agency relationship with the attorney who handled her EEOC case.” *Id.* Here, even
22 taking all of the statements in plaintiff’s declaration as true, there is no conduct attributable to
23 defendants that prevented plaintiff from filing her claim or from exercising a relationship with her
24 attorney. Indeed, the attorneys now representing her filed the original complaint in this case on
25 behalf of her sister in May 2023, roughly two years after plaintiff states she was restored to capacity.
26 The Court declines to extend *Stoll* under the facts presented here.⁷

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⁷ Plaintiff does not specifically argue that she is entitled to equitable tolling under California
28 law. Even if she did, that doctrine would be unavailable. California’s equitable tolling doctrine

1 In sum, the Court finds plaintiff is not entitled to equitable tolling or statutory tolling based on
2 incapacity.

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4 **II. Overlapping Tolling Periods**

5 Plaintiff also seeks to tack each tolling period together consecutively, such that the statute of
6 limitations is extended by the total of all of the days of tolling, even if some of those days
7 overlapped. Pl.’s Supp. Br. at 2. Defendants argue that any overlapping tolling periods run
8 concurrently. Dkt. No. 65, Reply at 2–3. Under plaintiff’s calculation method, her claims would
9 be timely. Under defendants’ method, her claims would not.

10 In California, it is unsettled whether overlapping tolling periods run concurrently or
11 consecutively. The situation most often arises in the prison context, where a prisoner serving a term
12 of less than life is entitled to up to two years of tolling during the period of incarceration but who
13 also must pursue mandatory administrative remedies before bringing a Section 1983 action in
14 federal court. *See Martin v. Biaggini*, No. 12-CV-06287-JD, 2015 WL 1399240, at *1-2 (N.D. Cal.
15 Mar. 26, 2015); *see also* Cal. Civ. Proc. Code § 352.1(a). Some courts have found that overlapping
16 statutory and equitable tolling periods run concurrently, based on the “common sense explanation
17 that when two or more reasons for tolling exist during the same period that those reasons will toll
18 concurrently during the time they are both active, and are not tacked consecutively, one upon the
19 other[.]” *Stevenson v. Holland*, No. 1:16-CV-01831-AWI-SKO, 2017 WL 2958731, at *6 (E.D.
20 Cal. July 11, 2017) (internal quotation marks and citations omitted); *see also* *Martin*, 2015 WL
21 1399240, at *4 (“when there are multiple reasons for tolling, the tolling should be concurrent, not
22 consecutive”); *Reyes v. Sotelo*, No. C 11-2747 YGR PR, 2012 WL 2993751, at *5 (N.D. Cal. July
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24 “evolved from three lines of California cases” *Saint Francis Mem’l Hosp. v. State Dep’t of*
25 *Pub. Health*, 9 Cal. 5th 710, 724 (2020) (citation omitted). The doctrine may apply “when a plaintiff
26 was already involved in one lawsuit, and filed a subsequent case that could lessen the damage or
27 harm that would otherwise have to be remedied through a separate case.” *Id.* (citation omitted). It
28 may apply “where a plaintiff was required to pursue, and did indeed pursue, an administrative
remedy before filing a civil action.” *Id.* (citation omitted). Finally, “courts tolled the statute of
limitations ‘to serve the ends of justice where technical forfeitures would unjustifiably prevent a
trial on the merits.’” *Id.* (quoting *Addison v. State of Cal.*, 21 Cal. 3d 313, 319 (1978)). None of
these situations apply here.

1 20, 2012) (“Tolling for Plaintiff’s two concurrent disabilities (his incapacitating mental illness and
2 incarceration) cannot run consecutively to extend the limitations period”) (citing *Rose*, 64 Cal. App.
3 at 217).

4 In contrast, other courts have held that overlapping statutory and equitable tolling periods run
5 consecutively, thereby further extending the statute of limitations period. These courts “have read
6 California law regarding equitable tolling to require tacking of additional time (beyond the statutory
7 tolling period) to the end of a limitations period when an equitable tolling event occurs during a
8 period of statutory tolling.” *Stevenson*, 2017 WL 2958731, at *5. This reasoning is largely based
9 on language in *Lantzy v. Centex Homes*, where the California Supreme Court stated:

10 [T]he effect of equitable tolling is that the limitations period stops running during the
11 tolling event, and begins to run again only when the tolling event has concluded. As
12 a consequence, the tolled interval, no matter when it took place, is tacked onto the
end of the limitations period, thus extending the deadline for suit by the entire length
of time during which the tolling event previously occurred.

13 31 Cal. 4th 363, 370–71 (2003). However, “*Lantzy* did not consider a situation in which a limitations
14 period is already tolled when an event with independent power to toll occurs.” *Martin*, 2015 WL
15 1399240, at *3. While consecutive tolling is often applied while a prisoner plaintiff pursues
16 administrative remedies, that is not the situation at hand here. *See, e.g., Harris v. Quillen*, No. 1:17-
17 CV-01370-DAD-SAB (PC), 2021 WL 5085223, at *6 (E.D. Cal. Mar. 5, 2021), *report and
recommendation adopted*, 2021 WL 4206157 (E.D. Cal. Sept. 16, 2021); *Caranza v. Lewis*, No.
18 15-cv-00682-YGR (PR), 2017 WL 1050538, at *18 (N.D. Cal. 2017); *Lira v. Dir. of Corr.*, No. C
19 00-905 SI, 2007 WL 1976136, at *1 (N.D. Cal. July 3, 2007).

21 Under the facts presented here, the Court agrees with the line of cases finding that
22 consecutive overlapping tolling periods should run concurrently. The Court emphasizes that this is
23 not a case in which the Court is asked whether equitable tolling and statutory tolling should be
24 tacked one after another. The Court has already found above that equitable tolling does not apply,
25 and no mandatory administrative exhaustion process applies to China Young’s claims. Plaintiff
26 relies heavily on *Lantzy*’s discussion that an equitably tolled interval is “tacked onto the end of the
27 limitations period.” *See Lantzy*, 31 Cal. 4th at 370–71. But plaintiff skims over the previous
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1 sentence of the opinion: “. . . the effect of equitable tolling is that the limitations period *stops running*
2 during the tolling event, and begins to run again only when the tolling event has concluded.” *See*
3 *id.* at 370. This is consistent with the California Supreme Court’s long-standing definition that
4 “Tolling may be analogized to a clock that is stopped and then restarted. Whatever period of time
5 that remained when the clock is stopped is available when the clock is restarted, that is, when the
6 tolling period has ended.” *Pearson Dental Supplies, Inc. v. Superior Ct.*, 48 Cal. 4th 665, 674 (2010)
7 (quoting *Woods v. Young*, 53 Cal. 3d 315, 326 n.3 (1991)).

8 Here, plaintiff would have the Court take each of the separate tolling periods she is claiming
9 and add them all together, regardless of when they occurred. The most critical of these are the
10 overlapping periods of tolling under Emergency Rule 9 and the pendency of plaintiff’s criminal
11 charges under California Government Code § 945.3.⁸ Emergency Rule 9 tolled the statute of
12 limitations from April 6, 2020, until October 1, 2020, for a total of 178 days. Plaintiff’s criminal
13 charges were pending from June 4 or 25, 2020, until December 22, 2021, for a total of 566 or 545
14 days. Plaintiff therefore would add 178 days under Emergency Rule 9 to 566 days of statutory
15 tolling under Government Code § 945.3, even though the dates of those two periods overlapped for
16 nearly four months. Plaintiff has cited no case where overlapping statutory tolling periods, rather
17 than some combination of statutory and equitable tolling, were tacked consecutively.

18 At the hearing, plaintiff cited *Parham v. City of West Covina* in support of her position. *See*
19 Dkt. No. 73, Pl.’s Notice of Relevant Case; Dkt. No. 74, Def.’s Resp. However, *Parham* did not
20 involve multiple overlapping tolling periods. The plaintiff in *Parham* invoked statutory tolling
21 under California Government Code § 945.3 while his criminal charges were pending from October
22 11, 2018, until November 22, 2019. *Parham v. City of West Covina*, No. 2:21-cv-09114-FLA
23 (GJSx), Dkt. 26 at 6 (C.D. Cal. Nov. 10, 2022). After that tolling had ended and the clock on his
24 limitations period resumed, he then sought to apply tolling under Emergency Rule 9, beginning
25 April 6, 2020. *Id.* at 7. The *Parham* court found the plaintiff could invoke these two doctrines and
26 denied a motion to dismiss on statute of limitations grounds. *Id.* at 4–8. *Parham* does not stand for
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28 ⁸ Because it is not necessary to the outcome of this motion, the Court assumes without deciding that Emergency Rule 9 applies to plaintiff’s federal claims.

1 the principle plaintiff seeks to apply here, which is essentially to double-count the roughly four-
2 month period when her criminal charges and Emergency Rule 9 overlapped. Therefore, *Parham*
3 does not support plaintiff's contention that Emergency Rule 9 tolling in this case should be counted
4 consecutively.

5 For these reasons, the Court adopts the calculations presented in defendants' reply brief.
6 Though defendants dispute the applicability of some of the claimed tolling, such as Emergency Rule
7 9 and California Penal Code § 853.6, even granting plaintiff all of these periods would not save her
8 claim where certain dates overlap. Giving plaintiff the benefit of the claimed tolling following her
9 arrest and release on misdemeanor charges, but not giving her an additional three to five months for
10 incapacity, results in the following calculation: 731 days under the original two-year statute of
11 limitations,⁹ 3 days for her incarceration following arrest, 25 days following her release on
12 misdemeanor charges, and 626 days between when the statute of limitations was tolled under
13 Emergency Rule 9 on April 6, 2020, until her criminal charges were resolved on December 22,
14 2021. In total, plaintiff's 654 days of tolling added to the 731 days under the statute of limitations,
15 gave her 1,385 days from the time her action accrued on October 20, 2019, to file her action.
16 Plaintiff's deadline to file was August 5, 2023. Her suit, filed August 21, 2023, was therefore
17 untimely.

19 CONCLUSION

20 For the foregoing reasons, the Court finds plaintiff China Young's claims are barred by the
21 statute of limitations and hereby GRANTS defendants' motion for judgment on the pleadings.

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23 **IT IS SO ORDERED.**

24 Dated: September 24, 2024

25 
26 SUSAN ILLSTON
27 United States District Judge

28 _____
29 ⁹ 2020 was a leap year.